



FH
3115918631

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Leroy Maclin
1536 W Washington St Apt A
Milwaukee, WI 53204

DECISION

LVO/157422

PRELIMINARY RECITALS

Pursuant to a petition filed May 02, 2014, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regard to Other, a hearing was held on June 12, 2014, at Milwaukee, Wisconsin.

The issues for determination are:

1. Whether the agency properly seeks to recover an overpayment of W-2 benefits; and
2. Whether the agency properly imposed a levy for the unpaid W-2 debt on the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Leroy Maclin
1536 W Washington St Apt A
Milwaukee, WI 53204

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Keisha Love

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # 3115918631) is a resident of Milwaukee County.
2. Petitioner and LB have one child in common, QB. Between July, 2010 and June, 2013, LB received W-2 benefits and child care benefits.

3. On July 16, 2013, the W-2 agency issued a Wisconsin Works (W-2) Overpayment Recoupment Notice to the Petitioner at 1536 W. Washington St., Upper, Milwaukee, WI 53204 informing the Petitioner that the agency intends to recover an overissuance of W-2 benefits issued to LB for the period of July, 2010 – May, 2013 in the amount of \$14,220 alleging a failure to report Petitioner resided with LB. The notice informed the Petitioner of the right to request a W-2 Fact Finding Review within 45 days of the decision date.
4. Petitioner was incarcerated in the Milwaukee County Jail from May 2, 2013 – March 2, 2014. The agency was notified of his incarceration on July 18, 2013. Additional agency case comments on November 19, 2013 and February 12, 2014 acknowledge Petitioner's incarceration and indicate the agency updated the living arrangement in the system.
5. On October 11, 2013, the agency issued three Wisconsin Works Overpayment Notifications with overpayment worksheets to the Petitioner for three claims. The notifications were issued to the Petitioner at the Washington St. address.
6. On November 4, 2013 and February 4, 2014, the agency mailed repayment agreements to the Petitioner at the Washington St. address.
7. On December 3, 2013, January 3, 2014, and February 4, 2014, the agency issued dunning notices to the Petitioner at the Washington St. address.
8. On April 23, 2014, the agency issued a Public Assistance Collection Unit Levy to the Petitioner. The notice was returned to the agency as undeliverable. Petitioner's employer received the levy notice.
9. On May 2, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

In this case, the Petitioner disputes the issuance of the levy as well as the underlying W-2 overpayment action which led to the issuance of the levy.

With regard to the issuance of the levy, the Wisconsin Administrative Code, at Wis. Admin. Code, § DCF 101.23 (10) (c), states that:

...

(c) Service of levy and review when property levied.

...

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

...

Wis. Admin. Code, §DCF 101.23(10)(c).

In this case, the Petitioner did not receive the actual notice of the levy. His employer received the notice and informed the Petitioner of it. The Petitioner contacted the agency to find out more about the reason for the levy and was advised that he could file a hearing request. Petitioner filed a timely appeal of the levy.

The agency did not produce evidence that the Petitioner was properly served with the levy, in accordance with the requirements in DCF 101.23(10)(c) to personally serve the levy or serve it by mail with a

signature of acceptance. Based on the evidence presented, I conclude the agency did not properly issue the levy.

In addition, I conclude the Petitioner did not receive adequate due process notice regarding the overpayment action. The statute governing recovery of W-2 overpayments states as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment. The county, tribal governing body, Wisconsin works agency or department shall provide notice of the overpayment to the liable person. The department shall give that person an opportunity for a review following the procedure specified under s. 49.152, if the person received the overpayment under s. 49.141 to 49.161, and for a hearing under ch. 227.

Wis. Stats. § 49.195(3). (Italics added).

This statute and due process require that the agency provide adequate notice to an individual against whom the agency seeks to recover an overpayment and an opportunity to be heard before the action is taken.

In this case, the agency became aware two days after issuance of the initial W-2 recoupment notice in July, 2013 that the Petitioner had been incarcerated since May, 2013. At the time of the issuance of the overpayment notifications and worksheets in October, 2013, the agency was aware of his incarceration and the system had supposedly been updated to reflect the Petitioner's incarceration. Despite the agency's knowledge of the Petitioner's incarceration, no notice was issued to the Petitioner at the Milwaukee County Jail. Therefore, the Petitioner had no notice of the overpayment action and no opportunity to request a hearing on the matter.

The agency presented evidence at the hearing regarding the basis for the overpayment. However, Wis. Stats. §49.195(3) requires that a W-2 Fact Finding Review take place following the procedure specified under Wis. Stats. § 49.152 if an individual requests a review of the overpayment. After such W-2 Fact Finding Review occurs, the individual may request a second level review with DHA if the individual disputes the decision of the Fact-Finding Review.

Therefore, I am remanding this matter to the W-2 agency to re-issue the Notifications of W-2 Overpayment and overpayment worksheets to the Petitioner with notice of the right to a Fact-Finding Review and right to a second level review with DHA. If the Petitioner wishes to have the overpayment reviewed, he must file a request for the review within 45 days of the date of the overpayment notice in accordance with the instructions in the notice.

In summary, there was insufficient evidence produced to demonstrate that the levy was properly served on the Petitioner. In addition, the evidence demonstrates that the Petitioner did not receive notice of the W-2 overpayment. I am therefore remanding this matter to the agency to re-send the W-2 overpayment notifications and worksheets to the Petitioner at the Washington St. address where he currently resides. If the Petitioner wishes to dispute the overpayment, he must follow the instructions in the W-2 overpayment notice to request a W-2 Fact Finding Review.

CONCLUSIONS OF LAW

1. There was insufficient evidence produced to demonstrate that the levy was properly served on the Petitioner.
2. The evidence demonstrates that the Petitioner did not receive notice of the W-2 overpayment.

THEREFORE, it is**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind its levy action against the Petitioner and return any property taken from the Petitioner pursuant to the levy. In addition, the agency must re-send the W-2 overpayment notifications and worksheets to the Petitioner including notice of the right to a Fact-Finding Review if a request is made within 45 days and notice of the right to a second level review with the Division of Hearings and Appeals. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

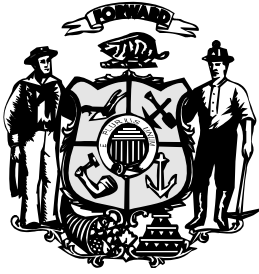
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of August, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2014.

Wisconsin Works (W-2)
Public Assistance Collection Unit